IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 29369 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AGRICULTURE PRODUCE MARKET COMMITTEE - Petitioner(s)
Versus
BHANDERI DHIRUBHAI NARSHIBHAI - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 30/11/2007

ORAL JUDGMENT

1. Heard learned Advocate Mrs. Sangeeta N. Pahwa for M/s. Thakkar Associates for the petitioner.

2. Through this petition under Article 227 of the Constitution of India, the petitioner has challenged the award made by the labour Court, Amreli in Reference (LCA) NO. 87 of 2001 dated 3.8.2007 wherein the labour court has granted reinstatement in favour of the respondent workman with continuity of service with 30% back wages with costs of Rs. 1500.00 to be paid to the respondent workman.
3. Learned Advocate Mrs. Pahwa for the petitioner raised contention before this court that the services of the respondent were terminated on 30.4.95 and he raised an industrial dispute in the year 2001. As per her submission, no new person was engaged by the petitioner. Labour court has not given reasons in support of its conclusion. Work was not available with the petitioner, therefore, services of the respondent were terminated, thereafter, no fresh recruitment was made by the petitioner as per the averments made by the petitioner in the written statement filed before the labour court. As per her submission, labour court has erred in law in not going into the question as to whether the workman has completed 240 days continuous service or not. She read before this court, para 8 of the award and written statement page 20 para 4. Her submission is that whatever averments made in the written statement by the party have to be considered as legal evidence before the labour court and thereafter, party is not required to substantiate and prove it by leading proper evidence and the court should have to consider the same as gospel truth. Except these submissions, no other submission was made by Mrs. Pahwa before this court and no decision was referred to and relied upon by her before this court in support of the submissions recorded herein above.
4. I have considered the submissions made by the learned Advocate Mrs. Pahwa before this court on behalf of the petitioner. I have also perused the award in question made by the labour court, Amreli. As regards the submission made by Mrs. Pahwa before this court that the averments made by the petitioner in the written statement has

to be believed and considered as legal evidence by the labour court, such contention cannot be accepted because it is contrary to settled law. Pleadings made by the party before the court are required to be proved and substantiated by the party by producing and proving necessary evidence in support of such pleadings. Pleadings cannot take place of evidence. Pleadings are mere contentions raised by the party before the court. Party is required to prove the same by leading proper evidence before the court. It is necessary to note one important aspect as has been mentioned by the labour court in para 5 of the award that after the evidence of the workman, vide Exh 21, closing purshis was filed vide Exh. 26 and petitioner has not examined any witness in support of their case and their oral evidence was closed vide Exh. 31. It is not the only lapse on their part but even the learned Advocate for the petitioner was not remaining present to argue or to make submission before the labour court in support of their case. Who is responsible and answerable for such a situation has to be decided by the petitioner. Thus, except the averments made by the petitioner in its written statement filed by the petitioner before the labour court, no oral or documentary evidence was led by the petitioner in support of the contentions raised by the petitioner in its written statement before the labour court. In such circumstances, labour court was right in believing the oral evidence produced by the workman whereby the averments made by the workman in his statement of claim were being substantiated and, therefore, rightly granted relief in favour of the workman. In doing so, no error has been committed by the labour court warranting interference of this court in exercise of the powers under Article 227 of the Constitution of India. This aspect was considered by the apex court in case of **State of Maharashtra v. Ramdas Shrinivas Nayak reported in AIR 1982 SC 1249** and **Daman Singh and others v. State of Punjab and others, reported in AIR 1985 SC 973.** In para 13 of said decision,t he apex court observed as

under:

> “13. The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable, No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the Court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be. wasted in enquiring into the question whether a certain ground to which no reference is found, in, the judgment of the subordinate court was argued before that court or not?”

5. As regards next contention raised by Mrs. Pahwa before this court about delay on the part of the workman in raising of an industrial dispute becoming fatal to the reference, considering the provisions of the Industrial Disputes Act, no limitation has been prescribed in the Statute for raising of an industrial dispute. Merely because the dispute is raised belatedly, after some period, that cannot become fatal to the reference. As no limitation has been prescribed in the ID Act, 1947 for raising of an industrial dispute, it has to be raised within reasonable

period. Labour Court has no jurisdiction to dismiss the reference on the ground of delay alone in raising of an industrial dispute when termination is found to be illegal by the labour court. This aspect has been examined recently in **Karan Singh v. M/s. Executive Engineer Haryana State Marketing Board reported in 2007 AIR SCW 6293 on 28.9.2007**. In the said decision, the apex court has observed that when termination is found illegal, delay in raising of dispute cannot be made the ground for rejection of the reference. In the said decision, labour court while setting aside order of termination of services, refused to grant relief on the ground of inordinate delay. Said orders were affirmed by the High Court. Order was not interfered as delay was unexplained, however, employer was directed to pay Rs.60,000.00 to workman. In para 15 of the said decision, after considering the law on the subject, the apex court has observed as under in para 15:

> "In the aforesaid background, We would have normally set aside the award of the Labour Court and the High Court But because of long passage of time, it would be inappropriate particularly when appellant has not even offered any semblance of explanation for the delay."

6. Thus, virtually, award made by the labour court of not granting relief and confirmed by the High Court was not interfered by the apex court in the aforesaid decision but looking to the facts and circumstances, relief has been molded by the apex court but the view taken by the apex court is while considering the case of National Engineering Industries Ltd. v. State of Rajasthan and Ors. (2000) 1 SCC 371 as well as Sapan Kumar Pandit v. UP State Electricity Board and others [(2001) 6 SCC 222]; Nedugandi Bank Ltd. v.KP Madhavankutty and Ors. (2000 (2) SCC 455 and SM Nilajkar and Ors. v. Telecom District Manager,Karnataka (2003 (4) SCC 27) and other decisions as referred to in para 14 of the said

judgment, apex court has held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. It was also held that the delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. It has also been held that we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Thus, considering the aforesaid decision of the apex court, delay of about six years in raising of an industrial dispute cannot be considered to be culpable or fatal to the reference disentitling the workman from claiming relief. It is also to be noted that if the order of reference itself is bad because of delay or delay is fatal to the reference according to the petitioner, then, why the petitioner has not challenged the order of reference before this Court by way of writ petition? That is also the view of the apex court as laid down in the aforesaid decision. Further, looking to the evidence on record, petitioner has not asked any question to the workman in cross examination in respect of delay. Not only that but the point raised in written statement was also not argued by the learned advocate for the petitioner before the labour court because no oral submissions at all have been made by the petitioner before the labour court. It is a settled law that all the points which are pressed into service, that can alone be examined by the court and except that, no other point is to be examined by the court. Party might have raised number of contentions in written statement but party may press into service only one or two contentions at the time of submission, in such situation, court has to consider only one or two contentions which have been pressed into service by the party concerned and not each and every contentions raised by the party in the written statement. Inspite of such settled legal position, labour court suo motu examined this aspect while granting relief in

favour of the workman. This aspect has been examined by the apex court **in Mahavir Singh versus UP State Electricity Board reported in 1999 II CLR page 7**. In the said matter, there was delay of about 9 years in raising of an industrial dispute. In the said decision, the apex court held that merely because of delay, dispute cannot be ceased to be existing but while granting relief, court can take care of that aspect. It was held by the apex court in para 2 and 3 of the said judgment as under:

> "2. In our view, the order passed by the High Court cannot be sustained. The services of the appellant Chowkidar were terminated by respondent No.1 Board. The date of termination is 12.11.1975. He raised an industrial dispute though belatedly in March, 1983.Ultimately, reference was made by the appropriate Government on 17.4.1984. The labour court adjudicated the reference and took the view that the termination was illegal but considering the delay in raising the dispute, as a package 50% back wages were directed to be granted to the appellant with reinstatement. Respondent No.1 carried the matter in appeal before the High Court under Article 226 of the Constitution of India. The High Court took the view that as the dispute was raised belatedly, thereference itself was incompetent though agreeing with the labour court that on merits the termination order could not be sustained and it was illegal. It is thhis order of the High Court which is in challenge before us.
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> 3. Once termination is held to be illegal, we fail to appreciate how the entire reference could have been rejected. The dispute lingered on for number of years. That would not

> mean that the dispute had ceased to exist. It is of course true that belatedly the dispute was raised but that has been taken care of by the labour court by not awarding full back wages but only 50 per cent of the back wages all throughout from the date of termination till reinstatement. Which order as passed by the labour court could not be said tobe in any way uncalled for and illegal."

7. Thus, in the aforesaid matter in Mahavir Singh (Supra), award of reinstatement with 50% back wages for the period all throughout made by labour court was made though delay was of 9 years whereas in this case, considering delay on the part of workman in raising of an industrial dispute of about six years, labour court has granted only 30 per cent back wages and that too from the date of the reference and not from the date of termination. Therefore, contention raised by learned Advocate Mrs. SN Pahwa on behalf of the petitioner about delay in raising of an industrial dispute cannot be accepted.
8. Looking to the reasoning given by the labour court, when the termination order is illegal because from 1993 to July, 1995, in between, respondent was remaining in service of the petitioner and it is not the case of the petitioner that he was not continuing in service even according to the averments made by the petitioner in the written statement filed before the labour court, therefore, by way of implied admission of the petitioner, continuous service of the workman was established before the labour court because from 1993 to July, 1995, there was no break in the service of the workman. Therefore, there is no need to go into the said aspect of the matter when the facts are so eloquent and clear as impliedly admitted by the petitioner before the labour court in the written statement. If that aspect is kept in mind, then, non compliance of section 25F is enough to render the termination order illegal void ab initio. Evidence of the workman vide

Exh. 21 had remained unchallenged on the ground that there was no positive evidence placed on record by documentary or oral evidence of the petitioner that after termination of the services of the respondent workman, no new employees were recruited by the petitioner, therefore, legal evidence of the workman had remained unchallenged and no rebuttal legal evidence was led by the petitioner contrary to the evidence of the workman, therefore, labour court was right in believing the legal evidence of the workman and was also right in not believing the averments made by the petitioner in the written statement because same were not substantiated and proved by the petitioner by producing and/or adducing evidence before the labour court. Therefore, contentions raised by learned Advocate Mrs. Pahwa in that reg ard are rejected and labour court has rightly examined the said issue on the basis of the evidence on record and in doing so, labour court has not committed any error requiring interference of this court in exercise of the powers under Article 227 of the Constitution of India.

9. As regards grant of 30 per cent back wages by the labour court, as such, no submissions were made before this court by Mrs. Pahwa on that aspect. However, considering the award in question, it appears that the labour court has, keeping in view delay on the part of the workman in raising of an industrial dispute, not granted the back wages from the date of termination but has granted the same with effect from the date of reference till the date of actual reinstatement of the workman and while considering that the workman has done some agricultural work, labour court has granted 30 per cent back wages since the petitioner was not able to prove gainful employment of the workman during the interim period. Labour court has rightly considered delay in raising of an industrial dispute and made the award in question rightly as the employer was not able to prove gainful employment of the workman in any establishment during the interim period by producing any evidence before the labour court.

In view of that, according to my opinion, contentions raised by Mrs. Pahwa cannot be accepted and the same are required to be rejected. Therefore, award of reinstatement also does not call for any interference of this court in exercise of the powers under Article 227 of the Constitution of India.

10. This Court is having very limited jurisdiction in exercise of the powers under Art. 227 of the Constitution of India.In exercise of such powers, unless it is successfully demonstrated that the findings given by the labour court are contrary to record and facts or that the same are perverse, this court cannot interfere with the same. Even if the two views are possible, this court cannot substitute the same and cannot act as an appellate authority while exercising such powers. Mrs. Pahwa, learned advocate for the petitioner has not been able to point out any jurisdictional error and/or irregularity committed by the labour court while making the award in question. Therefore, there is no substance in this petition and same is required to be rejected.

11. In result, this petition is dismissed.

(H.K. Rathod,J.)

Vyas